Tells the Facts and Names the Names

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The Texas Death Machine

Being charged with a capital crime is surely bad news any where but there's no place worse than Texas. After the state Board of Pardons turned down Karla Faye Tucker's petition, she became the 146th person executed by Texas after the Supreme Court voted to reinstate the death penalty in 1976. Texas is also a trendsetter when it comes to killing the mentally retarded and children. (Incidentally, the death penalty does not appear to be a deterrent in Texas. Murder rates in Dallas, Houston and San Antonio are higher than they are in New York, where the death penalty was reinstated only last year.)

Texas, though, merely reflects what is true nationwide. The chance that a person charged with a capital crime will live or die depends enormously on race, social class and perhaps most importantly of all, where the crime was committed. In calling for a moratorium on the death penalty last year, the American Bar Association said, "Today, administration of the death penalty, far from being fair and consistent, is instead a haphazard maze of unfair practices with no internal consistency."

For this report, we're grateful to Stephen Bright of the Southern Center for Human Rights in Atlanta and two death penalty lawyers in Texas, David Dow and Brent Newton, who provided us with much of the information in this article.

When it comes to the death penalty, Texas is in a league of its own and the situation there is growing worse. Of the 146 people executed in the state since the death penalty was reinstated, 37 were killed in 1997 alone.

Racism plays a huge role in determining who dies. In one glaring example, Texas law enforcement authorities picked Clarence Lee Brandley from among many suspects in a circumstantial case of rape and murder of a white woman. As authorities told Brandley— convicted but released in 1989 after being exonerated— "You're the nigger, so you're elected". Dallas has sent dozens of people to death row but never for killing an African American. Harris County (Houston) alone is home to 40 percent of all African Americans in Texas on death row. Blacks make up only 20 percent of the county's population but about two-thirds of its death row inmates.

Texas also boasts a number of mad dog district attorneys. In Dallas, the DA's office prepared a manual for new prosecutors, used until the early 1990s, which said: "You are not looking for a fair juror, but rather a strong, biased and sometimes hypocritical individual who believes that Defendants are different from them in kind, rather than degree... You are not looking for any member of a minority group which may subject him to suppression— they almost always empathize with the accused...Minority races almost always empathize with the Defendant."

Houston has executed more people since the re-imposition of the death penalty than any state except, of course, Texas. The Texas Observer recently dubbed Huntsville prison near Houston, where Karla Faye Tucker was executed, "the most active human abattoir in North America."

The man most responsible for this dubious distinction is Johnny Holmes, who has headed the local DA's office since 1979. Holmes hangs a sign in his office's death penalty unit entitled "The Silver Needle Society" which contains a list of all the people killed by lethal injection in the county. Holmes's office also reportedly throws champagne parties on the night of scheduled executions.

(Continued on page 5)

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Our Little Secret

Call it Whitemail

Ahoy there, Rep Richard Baker of Louisiana, we've just learned of your little secret, and it sure ain't purty. Frankly, it displays you as exactly the bigoted racist your foes alleged you to be when you profited from the gerrymander that ended the political career of Rep. Cleo Fields, a very fine man.

Here's the story. Doing good works in Baton Rouge is Solidarity House, a Catholic community that gives food and shelter to the beleagured. Currently resident there are thirteen black and four white men. On December 31 of last year Tim Vining, Solidarity House's director, along with the other three white residents, received an end-of-the-year constiuent's letter from Rep. Baker. Vining noticed that not one of the eleven blacks also resident at Solidarity House had been blessed with such a communication from the Rep.

Vining sallied forth and conducted an informal survey of the neighborhood and discovered that only whites were getting such letters from Rep. Baker who, obviously enough, was running a segregated, whites only mailing operation, using congressional franking privileges, courtesy of the taxpayer.

Vining then sent a Freedom of Information Act request to Baker's office, challenging the rep and his staff to provide even one black addressee. After six weeks the best Baker could say was that he was taken aback by the enquiry because the usual response was a protest that he was mailing too much.

Apprised of the situation by Vining, we called Rep. Baker and had words with his aide, Christie Castille. She told us that they'd been running low on funds in that end-of-the-year mailing and had decided to send the letter "only to 37,000 people who were heads of households." Castille said that only men recieved the constituent letter.

Huh? Only white men are heads of households in Rep. Baker's district? We called B.B. Facundus, the Baton Rouge rep for the National Women's Political Caucus, who exploded with richly Cajun-accented outrage at Baker's behaviour: "What the hell is he talking about? There are 80,000 women heads of household in his district."

Boy Talk

How come "pussy" dogs Vernon Jordan? He's a man, incidentally, who was nearly shot to death by a racist years ago when he was entering an Indianapolis hotel in the company of a white woman, Jordan may be the victim of essayist Christopher Hitchens' tendency to gild the lily.

Two summers ago we were told by a Martha's Vineyard hostess of impeccable veracity that Vernon Jordan had confided to her in the course of a dinner party on that ghastly island that Clinton hated the Vineyard "because he couldn't get any pussy". The same tale apparently reached ears of Hitchens who was then cited by the *New York Post* as having heard directly from Jordan himself about Bill and the pussy factor.

By now the story was traveling along the food chain to 60 Minutes, where, on February 15, Mike Wallace, got as far as "pu..." before a tactful bleep intervened. Wallace was enquiring about Jordan's vacation enthusiasms.

Years ago Hitchens confided to us that he had had it from Senator John McCain of Arizona directly that he, McCain, had been betrayed to prison guards by former Senator Jeremiah Denton of Alabama for masturbating in the Vietnamese POW camp in which the two had once languished. It was hard to trace the origin of the tale but CH certainly never had it from McCain and Denton's chief of staff denied the allegation with a passion that was truly touching.

Fun and Games

More tales from the dogpatch state, richly indicative of the socio-sexual culture that nourished President Weeniewagger in his formative years. A friend of CounterPunch now battling for all the right causes elsewhere in the Old South was once a prentice reporter on the *Arkansas Gazette*. Scheduled to staff the paper's Jonesboro bureau, our man spent a week in Little Rock being shown the ropes, residing in the old Capital hotel, a noted brothel in earlier times.

One evening, sipping a pensive beer and brooding on the turns of fate that were dispatching him, a proud son of Texas, to Jonesboro, our man's reveries were disturbed by uncouth revelry from three men cavorting and roaring in the hotel bar with three women visibly careless of their public reputation. After enduring the vulgar spectacle for a while, our man asked the barkeep how he could sanction this sort of behaviour.

"Don't you know who that is?" the barkeep asked, then informing the new arrival that the most raucous of the topers was Governor Clinton's attorney general, Steve Clark.

A few moments later, the three women took themselves off to the ladies' bathroom, followed about a minute later by the three men, Arkansas' chief legal officer to the fore.

"Did you see that?" cries our man to the barkeep, who solemnly replied in the negative. Our man made haste to the telephone, called the Gazette's news desk and reported that he had just personally witnessed the state AG repairing to the ladies' bath room with fallen women. He was informed curtly by the desk man that this sort of thing happened all the time and held no interest to the Gazette.

Later, now deployed in rusting Jonesboro, our man had occasion to visit

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Fayetteville where he became familiar with the freewheeling amours of Don Tyson. The chicken king was carrying on an affair with a married woman whose husband worked nights. One pre-dawn the husband returned early and spotted Tyson's car in his driveway. He held his peace and plotted revenge. The next night Tyson's car once again graced the driveway and thus was available to be entirely filled with concrete from a truck requisitioned by the injured party. With broken axles the Tyson vehicle was finally hauled off by a large industrial crane.

MORE ON WHORES

Solid testimony to the loveslave posture assumed by the League of Conservation Voters towards the Democratic Party comes in the form of the resounding 100 percent approval rating recently given by the League to Senator Dianne Feinstein of California. This generous allocation sits oddly with Feinstein's appalling environmental record, which prompted the normally tactful Sierra Club to say, apropos her Quincy Library bill, that it was "the worst piece of forest legislation in this century". The League also gave a 100 percent rating to Senator Joseph Lieberman of Connecticut. Lieberman is the darling of the National Association of Manufacturers, primarily because he is the preeminent spokesman in the upper chamber for deregulation, ever eager to brush aside all restraints on the ability of corporate Amercica to plunder and destroy.

Connoisseurs of the League's maneuvers conjecture that its dream is that Al Gore will assume the Presidency in the wake of Clinton's disgrace and he will name Feinstein as the veep, with the League then well placed at her elbow.

CASTANEDA'S CHE

A month ago we deplored a review in The Nation by Patrick Markee of the books about Che Guevara. That same review also irked Michael Ratner and Michael Smith, co-editors of *Che Guevara and the FBI*, published last year by Ocean Press. The Nation is apparently loth to run Ratner and Smith's excellent letter so here are portions of it.

"It is dismaying to see a reviewer for The Nation accept so uncritically the negative view of Che Guevera's life and politics that are set forth in Companero, the biography by Jorge G. Castaneda ('Semper Fidel' by Patrick Markee). Castaneda's goal, like that of Che's reformist critcs, is to get us all to believe that social revolution is impossible and that therefore 'Che's ideas, his life and opus, even his example, belongs to the past.' One would think Castaneda had learned a lesson from the last time he predicted an end to a revolution in his history of the Latin American left, *Utopia Unarmed*; four weeks after its publication, the Guevara-inspired Zapatista uprising changed the face of Mexico...

"Castaneda refuses to acknowledge that Che fought for political reasons: in Cuba, the revolution accomplished an across-the-board land reform, illiteracy was wiped out, unemployment was eradicated, and the life expectancy was raised from 55 years to the current 75 years. Instead, Castaneda employs disease and pop psychology to explain Che's life. Che placed himself in 'constant danger' because adrenaline was the 'best possible antidote for his asthma'. Asthma explains why Che was supposedly uncompromising politically and why he went from country to country; the 'only possible cure [for his asthma] was to avoid ambivalence — through distance, travel, and death.' It is hard to believe that Castaneda is serious about this. What of the rest of the generation of the 60s which he condemns as sharing this negative trait of the 'refusal of ambivalence.' Did we insist on an end to segregation, women's oppression, and the Vietnam war because we were asthmatics?...

"Did you see that?" the reporter asked the barkeep. "The Attorney General just went into the ladies bathroom".

"Che thought globally and had a vision of the 'new man' living in a society of abundance where the exploitation of people by people had ended. There are 60 million more poor people in Latin America now than there were when Che died. At that time, the gap separating the richest 20% of the world's population and the poorest 20% was 60:1. In 1990, it was 150:1. The infant mortality rate is 67 in Chiapas, 34.8 for Mexico nationally, but in Cuba, by contrast, it is only 7.9.

"Castaneda offers no solutions; he can only flee Mexico for a NYU professorship in the United States, where he had previously attended Princeton. Che was familiar with Castaneda's type. "There are those who fight and those who cry. (*Los que luchan y los que lloran.*)"

A LA LANTERNE!

Some wondered why Federal Reserve Chairman Alan Greenspan was harshly heckled in South Central Los Angeles early in the New Year. The obvious explanation is that the foul-breathed president-in-all-but-name was being rightly excoriated for economic policies that have left poor Americans even poorer. But there is another possibility. Greenspan is married to NBC News reporter Andrea Mitchell who was particularly sour in denouncing "paranoid conspiracy-mongers" who berated CIA boss John Deutch when he travelled to a town meeting in South Central in late 1996 to deny Gary Webb's series detailing CIA connivance with cocaine imports into Los Angeles. The people never forget! Their wrath is just!

AIR REAGAN

If you must fly into Babylon, the renaming of National Airport for Ronald Reagan provides yet one more reason to patronize BWI. The mad rush to consecrate the world's largest monument to union-busting featured an oddball cast of liberal Democrats, led in the Senate by Barbara Boxer, Dianne Feinstein, Chris Dodd, Joe Biden, Ron Wyden, Patty Murray and Ted Kennedy, who hailed the measure as "an appropriate honor for a distinguished president". Over in the House, there was a bit more grumbling on the Democratic aisle. Oregon's Peter Defazio argued that "there are many things which do not have names which could be named for Ronald Reagan, the B-1 bomber which he was a great champion of and Star Wars, for instance". But this protest didn't sway such champions of labor as Bruce Vento, Joe and Patrick Kennedy, Barbara Kennelly and, strangest of all, Dennis Kucinich from casting one for the Gipper. On the Republican side, only one man stood up to say no, that mighty maverick, the libertarian from Texas, Ron Paul. Paul for President! ■

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Germ War: The US Record

"As far as chemical and biological weapons are concerned, Saddam Hussein is a repeat offender. He has used them against his neighbors and on his own people."

Madeleine Albright, Secretary of State

By Albright's criteria Saddam has a way to go to catch up with the United States, which has deployed its CBW arsenal against the Philippines, Puerto Rico, China, North Korea, Vietnam, Laos, Cambodia, Cuba, Haitian boat people and Canada, plus exposure of hundreds of thousands of unwitting US citizens to an astonishing array of germ agents and toxic chemicals, killing dozens of people.

The US use of bio-weapons goes back to the distribution of cholera-infected blankets to American Indian tribes in the 1860s. In1900, US Army doctors in the Philippines infected five prisoners with a variety of plague and 29 prisoners with Beriberi. At least four of the subjects died. In 1915, a doctor working with government grants exposed 12 prisoners in Mississippi to pellagra, an incapacitating disease that attacks the nervous system.

After World War I, the United States went on a chemical weapons binge, producing millions of barrels of mustard gas and Lewisite. Thousands of US troops were exposed to these chemical agents to "test the efficacy of gas masks and protective clothing". The Veterans Administration refused to honor disability claims from victims of such experiments.

In 1931 Dr. Cornelius Rhoades, then under contract with the Rockefeller Institute for Medical Investigations, initiated his Puerto Rico Cancer Experiments, infecting dozens of unwitting subjects with cancer cells. At least thirteen of his victims died as a result. Rhoades went on to head of the US Army Biological Weapons division and to serve on the Atomic Energy Commission, where he oversaw radiation experiments on thousands of US citizens. In memos to the Department of Defense, Rhoades expressed his opinion that Puerto Rican dissidents could be "eradicated" with the judicious use of germ bombs.

In 1942 US Army and Navy doctors infected 400 prisoners in Chicago with malaria in experiments designed to get "a profile of the disease and develop a treatment for it." Most of the inmates were black and none was informed of the risks of the experiment. Nazi doctors on trial at Nuremberg cited the Chicago malaria experiments as part of their defense.

At the close of World War II, the US Army put on its payroll Dr. Shiro Ishii, the head of the Imperial Army of Japan's bio-warfare unit. Dr. Ishii had deployed a wide range of biological and chemical agents against Chinese and Allied troops. He also operated a large research center in Manchuria, where he conducted bio-weapons experiments on Chinese, Russian and American prisoners of war. Ishii infected prisoners with tetanus; gave them typhoid-laced tomatoes; developed plague-infected fleas; infected women with syphilis; performed dissections on live prisoners; and exploded germ bombs over dozens of men tied to stakes. In a deal hatched by Gen. Douglas MacArthur, Ishii turned over more than 10,000 pages of his "research findings" to the US Army, avoided prosecution for war crimes and was invited to lecture at Ft. Detrick, the US Army bio-weapons center.

Savannah, Georgia and Avon Park, Florida were the targets of Army bio-weapons experiments in 1956 and 1957.

In 1950 the US Navy sprayed large quantities of serratia marcescens, a bacteriological agent, over San Francisco, promoting an outbreak of pneumonia-like illnesses and causing the death of at least one man, Ed Nevins.

A year later, Chinese Premier Chou En-lai charged that the US military and the CIA had used bio-agents against North Korea and China. Chou produced statements from 25 US prisoners of war backing his claims that the US had dropped anthrax-contaminated feathers, mosquitoes and fleas carrying Yellow Fever and propaganda leaflets spiked with cholera over Manchuria and North Korea.

In 1951 the US Army secretly contaminated the Norfolk Naval Supply Center in Virginia with infectious bacteria. One type was chosen because blacks were believed to be more susceptible than whites.

Savannah, Georgia and Avon Park, Florida were the targets of repeated Army bio-weapons experiments in 1956 and 1957. Army CBW researchers released millions of mosquitoes on the two towns in order to test the ability of insects to carry and deliver yellow fever and dengue fever. Hundreds of residents fell ill, suffering from fevers, respiratory distress, stillbirths, and encephalitis. Several deaths were reported.

From 1966 to 1972 the United States dumped more than 12 million gallons of Agent Orange (a dioxin-powered herbicide) over about 4.5 million acres of South Vietnam, Laos and Cambodia. The government of Vietnam estimate the civilian casualties from Agent Orange at more than 500,000. The legacy continues with high levels of birth defects in areas that were saturated with the chemical. Tens of thousands of US soldiers were also the victims of Agent Orange.

In 1969 Dr. D.M. McArtor, the deputy director for Research and Technology for the Department of Defense, asked Congress to appropriate $10 million for the development of a synthetic biological agent that would be resistant "to the immunological and therapeutic processes upon which we depend to maintain our relative freedom from infectious disease".

In 1971 the first documented cases of swine fever in the western hemisphere showed up in Cuba. A CIA agent later said he had been instructed to deliver the virus to Cuban exiles in Panama, who carried the virus into Cuba in March of 1991.

In 1981, Fidel Castro blamed an outbreak of dengue fever in Cuba on the CIA. The fever killed 188 people, including 88 children. In 1988, a Cuban exile leader named Eduardo Arocena admitted "bringing some germs" into Cuba in 1980.

Four years later an epidemic of dengue fever struck Managua, Nicaragua. Nearly 50,000 people came down with the fever and dozens died. This was the first outbreak of the disease in Nicaragua. It occurred at the height of the CIA's war against the Sandinistas and followed a series of low-level "reconnaissance" flights over the capital.

In 1996, the Cuba government again accused the US of engaging in "biological aggression". This time it involved an outbreak of thrips palmi, an insect that kills potato crops, palm trees and other vegetation. Thrips first showed up in Cuba on December 12, 1996, following low-level flights over the island by US government spray planes. The US has been unable to quash a United Nations investigation of the incident that is now underway. ■

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"A Brazen Racial Animus":

Poverty, Race and the Death Penalty

To be sure, Texas faces stiff competition in laying claim to the title of the Death State. In Georgia, all 46 state district attorneys—who alone are charged with deciding whether to seek the death penalty—are white while 55 percent of those sentenced to death since 1976 have been black. No white person has been executed for the murder of a black in Georgia, nor has the death penalty ever been sought in such a case. Of the 12 blacks executed in Georgia since 1983, six were sentenced in cases where prosecutors had succeeded in removing all potential black jurors.

Nor does the warden of Georgia's state prison system, a mortician, inspire great confidence. After being appointed he declared that many prisoners in the state are not fit to kill. He later led a raid on one penitentiary in which, according to 18 employees, prisoners who were handcuffed or otherwise restrained were beaten.

The U.S. Supreme Court has ruled that people sentenced to death are not entitled to representation after the post-conviction phase. Georgia was the first state to take advantage of this decision when in 1996, it ordered Exzanavious Gibson, a man with an IQ of 80, to defend himself.

Eddie Lee Ross, a black man, was defended by a court-appointed attorney who had served as the Imperial Wizard of the KKK for 50 years. Ross's lawyer fell asleep repeatedly during the trial, failed to make any objections, filed no pre-trial motions and missed numerous court dates. Ross got the death penalty. James Messner, who was brain damaged, was electrocuted on July 28, 1988, after his own attorney suggested in closing arguments that the death penalty might, in fact, be the appropriate sentence.

In the case of William Hance, a black, the jury was deadlocked at 11-1 for death with the lone hold out being a woman named Ms. Daniels, the only black on the panel. Death sentences must be unanimous in Georgia so the other jurors began pressuring Daniels. One said, "We need to get it over with because tomorrow's mother's day". Daniels refused to budge but the foreman sent the judge a note saying the jury had voted for death. Despite an affidavit from Daniels, Hance went to the electric chair in 1994.

Virginia executes more people than any other state but Texas—42 since the death penalty was reinstated. The situation in the town of Danville, the last capital of the Confederacy, is instructive in regard to how the death penalty is imposed in the state. According to the Richmond Times-Dispatch, since being incorporated in 1890 every person executed in the town has been African-American.

Danville's chief prosecutor is William Fuller III, has sent seven men, all black, to death row. That's one less than the number of men condemned to death row in Richmond, a city with a population almost four times higher.

Fuller has charged eight people in Danville with capital murder, 16 blacks and two whites. He sought the death penalty for eight of the African-Americans and none of the whites. "Danville's criminal justice system is an unconstitutional embarrassment,"lawyers for Ronald Watkins, one of the condemned, wrote in a pending appeal to a federal court. "The brazen racial animus that fuels the death penalty machine in Danville should be acknowledged and neutralized."

The situation is not much better elsewhere. In Philadelphia, legal representation for people facing the death penalty is so poor that officials in charge of the system told the Philadelphia Inquirer that they would not want such lawyers to handle their case in traffic court.

In Alabama, the maximum fee allowed to a court-appointed attorney is $2,000. "I once defended a capital case [in Alabama] and was paid so little that I could have gone to McDonald's and flipped hamburgers and made more than I made defending someone whose life was at stake," says Bright.

In South Carolina, the state attorney general campaigned on a platform that called for replacing the electric chair with an electric sofa in order to speed the pace of executions. ■

Texas DAs are exceeded in their zeal for the death penalty only by Texas judges. The most famous case is that of Harris County District Judge William Harmon. During the 1991 trial of Carl Wayne Buntion, Harmon told the defendant that he was "doing God's work" to see that he was executed. According to a law review article by Brent Newton: "Harmon taped a photograph of the 'hanging saloon' of the infamous Texas hanging judge Roy Bean on the front of his judicial bench, in full view of prospective jurors. Harmon superimposed his own name over the name Judge Roy Bean that appeared on the saloon, undoubtedly conveying the obvious."

Harmon also laughed at one of Buntion's character witnesses and attacked an appeals court as "liberal bastards"and "idiots" after it ruled that he must allow the jury to consider mitigating evidence.

In a 1994 case, the defense requested that a number of death row inmates be brought to the courthouse. "Could we arrange for a van to blow up the bus on the way down here?" Harmon asked.

Another reason Texas kills so many people is the abysmal quality of many of its court-appointed attorneys. Attorneys in Texas have been drunk during trial (one even had to file an appellate brief from

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the drunk tank), had affairs with the wives of defendants, and not raised a single objection during an entire trial. In all these cases, appeals courts have ruled that defendants were provided with a competent defense.

In three death penalty cases in Houston, defense attorneys fell asleep during trial (as Stephen Bright says, "this gives new meaning to the term dream team"). The trial judge refused to dismiss the case of George McFarland, convicted of a robbery-killing, by saying that the state had fulfilled its obligation of providing McFarland with counsel and "the Constitution doesn't say the lawyer has to be awake". An appeals court in Texas upheld the death sentence on McFarland and the Supreme Court refused to review the case.

Attorney Joe Frank Cannon has represented ten men sentenced to death. "Represent" here is a generous description. In the case of Calvin Burdine, the court clerk testified that Cannon "was asleep on several occasions on several days over the course of the proceedings". Cannon's entire file on the case consisted of three pages of notes. (The prosecutor in that case urged the jury to choose death over life in prison because Burdine was homosexual. "We all know what goes on inside of prisons, so sending him there would be like sending him to a party", he said.)

During the past eight years, only the United States, Saudi Arabia, Iran, Iraq and Yemen have executed children (those who were under 18 at the time of the crime).

Texas is a leader in the practice of killing children. Johnny Frank Garrett was executed in 1992 for the rape-murder of a Catholic nun, committed when he was 17. As a child, Garrett was beaten by a series of stepfathers and seated on a hot stove because he would not stop crying. He was sodomized by a number of adults and forced to perform pornographic acts (including having sex with a dog) on film.

Garrett suffered from paranoid schizophrenia and while on Death Row regularly conversed with a dead aunt. Karla Faye Tucker got two abstentions from the Texas Board of Pardons and Parole; Garrett, executed in 1992, was shut out 17-0.

Joseph John Cannon sits on Death Row in Texas for a crime he committed as a teenager. He suffered serious head injuries after being hit by a truck when he was four and subsequently spent years in an orphanage. Between the ages of seven and seventeen, Cannon was sexually abused regularly by his stepfather and grandfather. At the age of fifteen he tried to kill himself by drinking insecticide. None of this information was presented to the jury in Cannon's case.

How to account for the singularity of Texas? We talked to A. Richard Ellis, an attorney based in San Francisco who handles death penalty appeals in states including California and Texas. He underlines the coincidence in Texas of two lethal traditions, namely southern racism and hang 'em high frontier justice.

Though Ellis stressed that there are dedicated lawyers of high quality in Texas, such as those working in the Texas Resource Center (which like other such appeals projects across the country lost its federal funding in 1995), the general level of legal representation in Texas is awful. "I've seen incredibly slipshod work there. A man on Death Row just sent me his state habeas appeal, which he saw as a ticket to lethal injection and he was right. It was 50 large-type pages of illiterate nonsense, and this from an attorney who lectures on habeas!"

Ellis says the state habeas appeal these days is often a convicted person's only chance at reprieve, in which fact-driven issues (such as ineffective counsel) impinging on a person's constitutional right to a fair trial can be raised. "In California, an appeals attorney can regard $35,000 as a reasonable (state-provided) opening budget, with the whole budget going to $150,000 and up. I just had a Texas case where I needed to get an expert witness, which could cost around $15,000. The Texas Court of Criminal Appeals gave me a total budget for the entire appeal of $5,000."

Of course, appeals face desperately long odds in all states. But in California, which actually has more people on Death Row than Texas—477 to 428—there are far more lawyers and investigators working to keep their clients alive. As a result, California has only executed four people since the death penalty was reinstated, a fraction of the number killed in Texas.

Texas is the only state where a judge or state attorney general can set an execution date long before the appeals process has been exhausted. Ellis noted one case where a condemned man saw his federal appeal go through district court, circuit court and the US Supreme Court in less than a month, with the last two appeals occuring on the day of his execution. The Supreme Court finally granted a stay 45 minutes after the scheduled hour of his death (authorities were good enough to delay the injection while they waited for a ruling to come down).

California is as eager as Texas to kill people. But there's a large and active legal opposition, plus the all-important presence of money. As Ellis points out, "In California, I can have a co-counsel. In Texas, I'm the whole team. Texas is an unbelievable death machine." ■

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